

DETENTION HEARING

13 The Honorable Theresa L. Fricke Presiding

14 March 20, 2020

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Transcribed by: Reed Jackson Watkins

Court-Certified Transcription

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1 A P P E A R A N C E S

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3 PRESIDING JUDGE: THERESA L. FRICKE

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5 FOR THE UNITED STATES:

6 TODD GREENBERG (Present via video)

7 Assistant United States Attorney

8 United States Attorney's Office

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12 FOR THE DEFENDANT:

13 HEATHER CARROLL (Present via video)

14 Federal Public Defenders Office

15 1331 Broadway, Suite 400

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18 ALSO PRESENT: Mathias Kane (Present via video)

19 Jamie Halvorson, Pretrial Services

20 (Present via video)

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2 March 20, 2020

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4 THE CLERK: -- for the Western District of
5 Washington is now in session, the Honorable Theresa L.
6 Fricke presiding.

7 THE COURT: Please have a seat. This is United
8 States versus Mathias Douglas Kane, case number
9 MJ-20-05054. Would the parties please introduce
10 yourselves for the record, starting with counsel for the
11 defendant.

12 MS. CARROLL: Thank you, Your Honor. This is
13 Heather Carroll from the Federal Defenders Office on
14 behalf of Mr. Kane.

15 MR. GREENBERG: Your Honor, this is Todd Greenberg
16 representing the United States.

17 MS. HALVORSON: This is Jamie Halvorson
18 representing United States Probation (inaudible).

19 THE COURT: And I will note that the Court is
20 viewing a video monitor, and on the video monitor, I am
21 able to observe that there is an individual seated at
22 counsel table in a courtroom, and I would like to ask
23 the individual, who I believe is the defendant, if you
24 can acknowledge that you are seated in a courtroom here
25 at the United States District Court and that you can

1 hear what I'm saying.

2 MATHIAS KANE: Yes, I acknowledge I'm sitting here
3 in District Court, and I can hear what you're saying.

4 THE COURT: Are you also able to see the face and
5 the place where the judge is sitting?

6 MATHIAS KANE: I can, Your Honor.

7 THE COURT: Excellent. I am able to hear
8 everything that you are saying and I'm able to see you
9 clearly. Let me ask counsel, are you able to hear me as
10 well as the defendant?

11 MS. CARROLL: This is defense counsel. Yes, I can,
12 Your Honor.

13 MR. GREENBERG: Yes, for the government, Your
14 Honor.

15 THE COURT: Okay. And, Mr. Kane, thank you for
16 confirming that.

17 MATHIAS KANE: You're welcome, Your Honor.

18 THE COURT: I have reviewed the first supplemental
19 pretrial services report. I have reviewed the original
20 pretrial services report. I have reviewed the defense
21 memorandum regarding the detention hearing. I've
22 reviewed the complaint. I have also listened to the
23 hearing that was recorded on March 17th, this past
24 Tuesday, and that hearing took place at the United
25 States District Court in Seattle before the Honorable

1 Michelle L. Peterson, magistrate judge.

2 And I want to confirm for counsel and for you,

3 Mr. Kane, that I listened to the entire recording and I
4 took careful notes, and I have those notes with me. I
5 also reviewed the government's motion for detention, and
6 I also have reviewed the -- the statement of the alleged
7 victim that was provided by e-mail to the Court, and as
8 I was listening to the recorded hearing that occurred on
9 the 17th of March, I was able to hear that the assistant
10 United States Attorney put that document formally before
11 the Court.

12 I also would like to state for the record that on
13 the 17th of March, there was a general order issued by
14 our chief district judge, Ricardo S. Martinez. That
15 general order is number 02-20 regarding court operations
16 under the exigent circumstances created by COVID 19 and
17 related Coronavirus. I want to confirm that counsel
18 have received a copy of or have had the opportunity to
19 review it on line, the general order number 02-20.

20 MS. CARROLL: Defense has, Your Honor.

21 MR. GREENBERG: Yes, Your Honor.

22 THE COURT: And then I also provided a copy of that
23 document so that defense counsel would be able to show
24 it to Mr. Kane. And is that something that already
25 occurred on the 17th of March, or were you able to take

1 care of that today, or both?

2 MS. CARROLL: I don't know if the general order was
3 shared with him. I did review the consent with him. I
4 did not go through the general order with -- with the
5 defendant, Your Honor.

6 THE COURT: Okay. And, Mr. Kane, I am observing on
7 the video here that you have some documents in front of
8 you.

9 MATHIAS KANE: Yes.

10 THE COURT: And is -- is one of those documents the
11 copy of the general order 02-20?

12 MATHIAS KANE: Yes, it is, Your Honor.

13 THE COURT: And do you have all four pages of it?

14 MATHIAS KANE: I do, Your Honor.

15 THE COURT: Okay. Excellent. So for the record, I
16 want to confirm that based on my listening and taking
17 notes of the recording on March 17th, 2020, that defense
18 counsel and the assistant United States attorney were
19 both present in the courtroom with Judge Michelle L.
20 Peterson presiding, and from what I listened to,
21 Mr. Kane, I believe, was in a separate courtroom.

22 Is that your understanding? I'm asking counsel.

23 Is that your understanding of how it occurred?

24 MS. CARROLL: That was my understanding from
25 talking with Ms. Pai-Thompson, Your Honor.

1 THE COURT: Okay. Mr. Greenberg, were you present?

2 MR. GREENBERG: I was not present at that hearing,

3 Your Honor, but -- but I share the Court's understanding
4 of the logistics of the hearing.

5 THE COURT: Okay. So it was a different assistant
6 United States Attorney? I believe, Mr. Lombardi, is
7 that correct?

8 MR. GREENBERG: Yes, Your Honor.

9 THE COURT: Okay. And let me also confirm that at
10 the very beginning of the hearing, on the 17th, again,
11 based on my notes and based on the careful listening
12 that I did earlier today, it sounded like, at first,
13 there was some amount of difficulty with the video and
14 audio equipment. Mainly, the audio, but that was
15 eventually resolved early in the hearing. And so I want
16 to confirm with counsel, is that also your
17 understanding?

18 MS. CARROLL: From defense, yes, it is, Your Honor.

19 MR. GREENBERG: Yes, Your Honor.

20 THE COURT: Okay. So what I would like to do is,
21 first of all, I would like to re-advise Mr. Kane of your
22 rights, even though this is not your first time in
23 federal Court. I like to make sure every defendant who
24 appears in my courtroom is well aware of the rights they
25 have.

1 MATHIAS KANE: Thank you, Your Honor.

2 THE COURT: First, let me tell you, you have the
3 right to remain silent. You are not required to make
4 any statement whatsoever during this hearing. Your
5 attorney may do all the talking, and she may express
6 anything that needs to be expressed at the hearing. So
7 you're not required to make any statement.

8 If you already made a statement to law enforcement
9 or to anyone else, that does not mean that you have
10 forever given up your right to remain silent. You may
11 invoke your right to remain silent at any time.

12 MATHIAS KANE: Okay.

13 THE COURT: You are not required to make any
14 statement to anybody, regardless of what's happening
15 between now and, you know, the entire time that this
16 criminal process in federal court is happening. All of
17 the different hearings, all of the -- whatever trial or
18 whatever sentencing, or any -- any of that, you're not
19 required to make any statement.

20 MATHIAS KANE: Okay.

21 THE COURT: But if you decide you want to waive
22 your right to remain silent and you want to make a
23 statement, then keep in mind anything that you say can
24 and will be used against you in a court of law.

25 MATHIAS KANE: Okay.

1 THE COURT: Also keep in mind that if you were to
2 start to make a statement -- let's imagine for a moment
3 that the authorities are questioning you and you're
4 talking with them, if you start to make a statement, you
5 can stop right in the middle of what you're saying, even
6 if you're right in the middle of a sentence or right in
7 the middle of starting to utter a word, you can stop at
8 any time and tell them, "I'm exercising my right to
9 remain silent," and then --

10 MATHIAS KANE: Okay.

11 THE COURT: -- all questioning would have to come
12 to a stop. Does that make sense?

13 MATHIAS KANE: Yes.

14 THE COURT: In addition, you have the right to have
15 your lawyer present during any questioning by
16 authorities. So if the authorities want to question you
17 and you want to have your lawyer there with you, you
18 have a right to that. So you can --

19 MATHIAS KANE: Okay.

20 MR. GREENBERG: -- tell the authorities, "I want my
21 lawyer here," and then all questioning has to come to a
22 stop until your lawyer is made available to you.

23 MATHIAS KANE: Okay.

24 THE COURT: You have a right to counsel during
25 every phase of a criminal matter. You may consult with

1 your attorney in court and outside of court. Your
2 attorney -- if you cannot afford to hire an attorney to
3 represent you, then the Court will appoint a lawyer to
4 represent you at no cost to you. Now, I --

5 MATHIAS KANE: Okay.

6 THE COURT: -- know that has already occurred in
7 this case, that Judge Peterson --

8 MATHIAS KANE: Yeah.

9 THE COURT: -- appointed the Federal Public
10 Defenders Office, and Ms. Carroll is your attorney.

11 MATHIAS KANE: Yes.

12 THE COURT: I like to remind every defendant that
13 that is their right, to have an attorney at public
14 expense if you cannot afford to hire your own attorney.

15 MATHIAS KANE: Okay.

16 THE COURT: Do you understand your right to remain
17 silent and your right to counsel?

18 MATHIAS KANE: I do, Your Honor.

19 THE COURT: Okay. Now, I'm also going to ask
20 Mr. Greenberg to advise again Mr. Kane of the charges
21 against him and the maximum possible penalties, and I'm
22 doing this just because there was some amount of -- you
23 know, as I was listening to the hearing, the recording
24 of the hearing on the 17th, some amount of difficulty
25 with the equipment. I think we've got a really clear

1 system here today, and I want to make sure --

2 MATHIAS KANE: Yes.

3 THE COURT: -- that the defendant has a very solid
4 understanding of the charges. The other thing I want to
5 make sure that the defendant has a solid understanding
6 of is that there is a specific intent element in the
7 charge that has to do with the threat, and I'm sure
8 you're aware of that.

9 So let me ask Mr. Greenberg if you would please
10 advise Mr. Kane of the charges and the maximum possible
11 penalties again on the record.

12 MR. GREENBERG: Yes, Your Honor. The complaint
13 contains three offenses alleged against the defendant.
14 Count 1 charges the offense of cyberstalking that's
15 alleged to have occurred beginning no later than on or
16 about January 5th, 2020, continuing through on or about
17 January 31st, 2020 in La Center.

18 That count alleges that the defendant, with the
19 intent to injure, harass and intimidate another person,
20 who is identified as BS, used a -- one of a variety of
21 electronic means that are listed in this count, engaged
22 in a course of conduct that placed BS in reasonable fear
23 of death and serious bodily injury, and caused,
24 attempted to cause, would be reasonably expected cause
25 substantial -- substantial emotional distress to BS.

1 That offense is an alleged violation of Title 18,
2 United States Code, section 2261(a), subsection (2)(a)
3 and (b).

4 The last two counts allege the offense of
5 interstate threat. Count 2 is alleged to have taken
6 place on or about January 12th of 2020, with Count 3
7 being alleged on or about January 20th, 2020. Both
8 counts allege that the defendant knowingly and willfully
9 transmitted, in interstate and foreign commerce in the
10 state of Washington to another state, communications in
11 the form of on-line internet posts that contain threats
12 to injure BS.

13 Both of those counts are alleged in violation of
14 Title 18, United States Code, section 875(c). The
15 maximum penalties on all three counts are identical.
16 They are a maximum jail term per count of five years in
17 prison, a fine of up to \$250,000, a three-year term of
18 supervised release and a \$100 special assessment per
19 count.

20 THE COURT: All right. And now let me ask defense
21 counsel, have you had the opportunity to consult with
22 your client about the consent to proceed by video
23 conference and waiver of in-person appearance?

24 It's my understanding that that occurred at the
25 last hearing, but it seems to me that in order to make a

1 crystal clear record, having that in writing would be
2 beneficial. I supplied a sample form, and I wanted to
3 confirm whether that's something that defense counsel
4 and Mr. Kane would be willing to consider.

5 MS. CARROLL: Your Honor, I did have a chance to
6 review that with him just prior to this hearing on the
7 phone. My understanding is he is willing to consent to
8 proceeding as we are today.

9 THE COURT: Okay. And Mr. --

10 MS. CARROLL: With the understanding that he is not
11 giving up any rights to argue about detention or -- or
12 those kinds of things, but merely consenting to the form
13 of the proceeding as we're doing today.

14 THE COURT: Okay. And, Ms. Carroll, the sample
15 consent and waiver that the deputy clerk of the court
16 provided, is that something that you have had a chance
17 to consult with your client about?

18 MS. CARROLL: Yes, I am -- I printed it out and I
19 -- I read it to him prior to the hearing, and I'm
20 looking at it now.

21 THE COURT: Okay. And, Mr. Kane, do you have a
22 copy of that consent to proceed by video conference and
23 waiver of in-person appearance? It's a two-page
24 document.

25 MATHIAS KANE: I do. I have it right here, Your

1 Honor.

2 THE COURT: And let me ask whether you have a means
3 of being able to sign, or do we need to bring a pen over
4 for you?

5 MATHIAS KANE: I have a pen. I can do it. Do you
6 want me to sign it now?

7 THE COURT: If you are ready.

8 MATHIAS KANE: Yes. It has been signed, Your
9 Honor.

10 THE COURT: And let me ask you, Mr. Kane, do you
11 have any questions or concerns having to do with the
12 ability to hear me and participate in this hearing?

13 MATHIAS KANE: Not at all.

14 THE COURT: Okay. And do you feel that you have
15 had a conversation with your attorney that causes you to
16 feel this is a consent and waiver that you are
17 comfortable with? In other words, do you feel confident
18 in your attorney's advice and representation?

19 MATHIAS KANE: I do, Your Honor.

20 THE COURT: Okay. I will accept the defendant's
21 written consent to proceed by video conference and the
22 defendant's waiver of in-person appearance.

23 At this time, I would like to also advise you,
24 Mr. Kane, that there is, within the legal interpretation
25 of one of the statutes that you're charged under, and

1 this would be, I believe, Count 2 and Count 3, 18 United
2 States Code, section 875(c).

3 There has been an interpretation by the United
4 States Supreme Court in a case called Elonis versus
5 United States, and for counsels' information, the
6 citation is 135 Supreme Court 2001. That's a 2015
7 United States Supreme Court opinion.

8 I'm also going to give counsel a Seventh Circuit
9 opinion that you can have a look at; United States
10 versus Khan, that's K-h-a-n, 973 Fed. 3d 1042, Seventh
11 Circuit, 2019. Under the statute, the mental state
12 requirement is that the government would be required to
13 prove beyond a reasonable doubt that the defendant is
14 transmitting a communication with the intent to send a
15 threat. In other words, for the purpose of issuing a
16 threat or with knowledge that the communication will be
17 viewed as a threat. So there must be proof the speaker
18 intended the recipient of the threat to feel threatened.

19 So that's something that I thought it was important
20 that you be advised of and that the attorneys be aware
21 of, because as we just were talking about, it's very
22 important for the defendant to have a solid
23 understanding of the charges that are contained in the
24 complaint.

25 At this time, I'm also going to describe that here

1 in this courtroom, as well as in the courtroom where
2 Mr. Kane is present, which is right next door to this
3 courtroom, we are observing the requirements of Chief
4 Judge Martinez's general order 02-20, and I'm also
5 proceeding under the proclamation by Governor Inslee,
6 which I provided a copy of for counsel, and I'm not sure
7 whether Mr. Kane received a copy of that.

8 This is the proclamation issued by Governor Inslee
9 officially on the 16th day of March 2020. It states
10 that for activities of less than 50 people, which of
11 course, this activity we're doing in court today is,
12 that those activities are prohibited unless the
13 organizers of those activities comply with social
14 distancing and sanitation measures established by the
15 United States Centers for Disease Control and Prevention
16 per the Washington State Department of Health
17 guidelines.

18 This order is going to be remaining in effect until
19 midnight March 31st, 2020, unless extended beyond that
20 date. I also note, it says, violators of this order may
21 be subject to criminal penalties pursuant to RCW
22 43.06.220(5).

23 The reason I'm putting this on to the record is
24 this Court is doing everything it can to comply with the
25 governor's order, and to also give due process to

1 Mr. Kane and also give an opportunity for other
2 participants in the hearing, other folks who may have
3 called in to participate as a witness or as a
4 representative of the alleged victim or the alleged
5 victim in this matter, as well as any members of the
6 public.

7 The public and the press have a First Amendment
8 right to open courts. And so by having this as a
9 hearing that's being conducted on the record and also
10 with a phone line that's available for people to
11 participate, we're doing the best we can to comply with
12 everything, is what I'm saying here.

13 I also want to put on the record that Mr. Kane,
14 because you were at the federal detention center, we are
15 trying to take extra precautions, because the federal
16 detention center, as a jail, people are in closer
17 quarters than anyone would want to be at this time.

18 MATHIAS KANE: Yes.

19 THE COURT: And I feel certain that not only you
20 realize that that is a difficulty at the federal
21 detention center, but all of us realize that that's a
22 situation that you found yourself in, that we need to
23 take extra precautions for you because of the --

24 MATHIAS KANE: Yes.

25 THE COURT: -- potential for that exposure, being

1 so close to other people.

2 MATHIAS KANE: Yes.

3 THE COURT: So I wanted to make sure and explain
4 all of that for the record. This is not the way I
5 normally conduct court. I much, much prefer to have
6 everyone in the courtroom, and to have the defendant --
7 and you, Mr. Kane, I'm sure, can understand this. I
8 want to have the defendant right here in court with me.

9 MATHIAS KANE: Yes.

10 THE COURT: So we are doing the very best we can
11 under these circumstances, and I just wanted to be able
12 to explain that to you and to everyone present and
13 anyone who is on the phone right now.

14 Now, if there are individuals who have called into
15 this hearing, please keep in mind you have to keep your
16 mute button on or keep the phone covered, if you don't
17 have a mute button, until there is a point in the
18 hearing -- if it turns out that you are a participant in
19 the hearing, then we will advise you when it's time for
20 you to speak, and then you can remove the mute or take
21 your hand off the phone, and -- and you'll be able to
22 participate.

23 In the meantime, you'll be able to listen to
24 everything, but as we would always do in Court, the
25 people who are here as the individuals who are listening

1 and participating from our gallery, you're not allowed
2 to speak unless the Court recognizes you as a person who
3 is authorized to speak.

4 So I don't want anyone to sort of jump in and start
5 talking, because, hey, we're all used to talking on the
6 phone, and it might feel a little bit odd to be in this
7 situation and not be able to say anything. But that's
8 how we need to conduct court today, and so I wanted to
9 advise anyone on the telephone that that is what's
10 happening.

11 Also, I want to let you know, Mr. Kane, if at any
12 time you want to have a private conversation with your
13 lawyer, please say the word. Just say, "Your Honor,"
14 put your hand up, I will be able to then look at you,
15 and then I'll know that's what's happening. And we can
16 take a recess --

17 MATHIAS KANE: Thank you.

18 THE COURT: -- for that purpose so that no one
19 hears the conversation, and you and your attorney can
20 have a private conversation. And, likewise --

21 MATHIAS KANE: Okay.

22 THE COURT: -- Ms. Carroll, the same thing for you.
23 If at some point you want to have a private conversation
24 with your client, Mr. Kane, please advise me of that,
25 and we will do that.

1 MS. CARROLL: Thank you, Your Honor.

2 THE COURT: All right. It is my understanding,
3 based on my listening to the recorded hearing on the
4 17th of March, as well as looking at the docket, that
5 this is a somewhat unusual situation, where instead of
6 having set the next hearing as being the preliminary
7 hearing, which we would normally set under the Court
8 rules. Instead, there is a status hearing set for the
9 17th of April, is that correct?

10 MR. GREENBERG: Yes, Your Honor.

11 THE COURT: Okay. I just wanted to confirm that.
12 And I'll confirm with the deputy clerk that that is now
13 on the calendar, is that correct?

14 THE CLERK: Before Judge Creatura, that is correct.

15 THE COURT: Okay. And what time on the 17th is
16 that scheduled to occur?

17 THE CLERK: That is set for 10:30 AM.

18 THE COURT: Okay. So I'm glad we were able to
19 confirm that. Okay. At this time, I believe our next
20 order of business is to proceed with the hearing
21 concerning detention or release, unless there is some
22 other matter that the parties wish to raise before we
23 proceed to that part of the hearing.

24 MR. GREENBERG: Your Honor --

25 MATHIAS KANE: Could I speak to my attorney?

1 THE COURT: Would you like us to clear the
2 courtroom?

3 MATHIAS KANE: Yeah, I'd like to ask her if you
4 could --

5 THE COURT: Okay. Don't tell me -- don't tell me
6 anything else.

7 MATHIAS KANE: Okay.

8 THE COURT: Okay. We will now clear the courtroom.
9 The Court will be in recess pending a conversation
10 between the defendant and counsel. The Court is now in
11 recess.

12 THE CLERK: All rise.

13 (A short recess was then taken.)

14 THE CLERK: The court is again in session. The
15 Honorable Theresa L. Fricke presiding.

16 THE COURT: Please be seated. Are the parties
17 ready to proceed with the hearing concerning release or
18 detention?

19 MS. CARROLL: The defense is ready, Your Honor.

20 MR. GREENBERG: Yes, Your Honor.

21 THE COURT: All right. Since this is the
22 Government's motion, we'll start with the Government.

23 MR. GREENBERG: Thank you, Your Honor. Before I
24 begin, I wanted to ask one question. And that is, did
25 the Court have the two exhibits that the Government

1 submitted earlier today? The Court didn't mention those
2 among the items that it has reviewed, so I'm just double
3 checking.

4 THE COURT: I believe they were given to me. I
5 have not yet reviewed them.

6 MR. GREENBERG: Okay. And that's fine, Your Honor.
7 I'll -- I'll -- I'll refer the Court to the exhibits
8 when they come up. Thank you.

9 Your Honor, you're aware the Government is asking
10 the Court to enter a detention order in this case. We
11 don't do that lightly. We understand the times we're
12 living in right now, but in this particular case, we do
13 feel strongly that Mr. Kane's release would be both a
14 danger to the community -- that is our primary
15 argument -- as well as would present a risk of his
16 flight, and so we are seeking detention in this matter.

17 I would note that the probation office concurs in
18 that same recommendation in their report to the Court.

19 Your Honor, the primary concern that we have and
20 the primary reason we think detention is necessary here
21 is texts on numerous specific individuals and type
22 classes of individuals in the community. First and
23 foremost, the need to protect the victim of the charged
24 count of BS.

25 As the Court knows from the complaint, Mr. Kane has

1 alleged to have engaged in a long pattern of conduct
2 harassing her, threatening her. He publicly posted her
3 address on line. He encouraged others and incited
4 others to, in his words, quote, "trash this Jew cunt."
5

6 He also drove by the victim's house, it sounds
7 like, on multiple occasions. One of those occasions
8 described in the complaint, he went by the house in an
9 intimidating fashion. His conduct shows that it's not
10 just on-line; that he is doing this in the real world as
well.

11 Understandably, the victim is extremely fearful of
12 Mr. Kane. She reported his conduct to the police on
13 multiple occasions. She's obtained a no contact order
14 in state court against him, and she speaks, I think, for
15 herself in the victim impact statement that has been
16 submitted to the Court. She's making clear that
17 harrassment, the threats, both on line and in person,
18 and that she lives in fear of Mr. Kane. That's only
19 exacerbated by the fact that they live on the same
20 street, just a few houses away from each other.

21 In addition to needing to protect -- protect the
22 victim against Mr. Kane, we also, I would submit, need
23 to protect police officers and the CPS workers from
24 Mr. Kane. He has made, as outlined in the complaint,
25 numerous posts threatening to harm police officers and

1 CPS workers who are involved in his case. He had been
2 -- and again, this isn't just on line, but in the real
3 world -- he has been (inaudible) and erratic and
4 harassing with police officers.

5 In February 2020 -- and this is not in the
6 complaint, but I have a police report documenting this
7 -- Mr. Kane visited the La Center Police Department, was
8 belligerent with the officers, ultimately challenged one
9 of the officers to a fight.

10 He also, as documented in the complaint, refused to
11 interact with the officers when they tried to serve him
12 with legal papers. He is flagged -- because of his
13 behavior, he's been flagged as someone who police
14 officers should treat as a dangerous individual.

15 He is the same way with the CPS workers. The CPS
16 records, in their documentation, document numerous
17 instances where --

18 MS. CARROLL: Your Honor, I'm going to object to
19 the -- I understand the Rules of Evidence may be relaxed
20 in this, but I haven't reviewed any of this. I don't
21 know what context or I haven't been able to examine any
22 of these police reports. So I would ask the Court not
23 to allow any of this evidence into the detention
24 hearing.

25 THE COURT: Let me ask you this, Mr. Greenberg. Is

1 this a proffer that you are putting into the record
2 that's based on information that you are either about to
3 provide to the defense or you already have provided to
4 the defense?

5 MR. GREENBERG: It is a proffer based on
6 information, Your Honor. And, yes, all of this will be
7 provided to the defense. Of course, we haven't produced
8 discovery in this case, and so it has not yet been
9 produced. But I am proffering these (inaudible) to the
10 Court based on the records that I have.

11 THE COURT: All right. And I believe that,
12 Ms. Carroll, the Bail Reform Act allows both parties to
13 put into the record information by proffer. And I
14 realize what you're saying is, gosh, I have not seen the
15 documentation of this yet and that you haven't had an
16 opportunity to interview various witnesses, and I think
17 that happens quite often in these initial hearings on
18 release or detention.

19 But I think it is allowed under the Bail Reform
20 Act, and I will take Mr. Greenberg's assurances that
21 this is material that will be provided to the defense in
22 discovery just as soon as the discovery exchange begins.

23 So I'm going to overrule your objection, and it is
24 noted for the record.

25 Also, as long as I'm asking for clarification,

1 Mr. Greenberg, let me ask you, is the Government's
2 contention that the Count 2 and Count 3 of the
3 complaint, that those charges would, under the Bail
4 Reform Act, be considered crimes of violence?

5 MR. GREENBERG: Yes, Your Honor, that is -- that is
6 our contention. We've indicated that on the motion for
7 detention.

8 THE COURT: Now, the only sort of recent case I've
9 seen on this is United States versus Santoro. That's
10 359 Fed. Supplement 3d 122. That's the United States
11 District Court for the District of Maine, and that
12 opinion was issued in January -- January 24th of 2019,
13 finding that this particular statute and the crime of
14 interstate threat, that this would be a crime of
15 violence under the Bail Reform Act.

16 And then that case cites to United States versus
17 Chapman, which is 866 Fed. 3d 129, and that's August
18 4th, 2017, a Third Circuit opinion. And it also refers
19 to a Ninth Circuit opinion, which is United States
20 versus De La Fuente, and that's 353 Federal 2d 766, and
21 that's Ninth Circuit 2003.

22 So I am comfortable with the Government's position
23 on that. I just wanted to make that clear for the
24 record.

25 MR. GREENBERG: Thank you, Your Honor. Continuing

1 on with the -- with the proffer I was making. Mr. Kane
2 has not only been belligerent, erratic with police
3 officers, but with the CPS workers he comes into contact
4 with as well. He has made threats against them. He's
5 made threats to harm BS to the CPS workers and generally
6 been, you know, very volatile in that environment.

7 Lastly, I think there is a need to protect Jewish
8 people in the community at large. For months, on a
9 daily basis, Mr. Kane has made posts -- anti-semetic
10 posts, ranting threats, kill Jews. This is particularly
11 of a concern to the FBI at this time, because I think
12 it's well documented at this point that there is a rise
13 in the support of anti-semetic sentiment and violence.
14 So, again, there's a concern there.

15 But one thing I want to point out to the Court as
16 to all of the concerns here are protecting the public
17 from the defendant is that he -- upcoming events are
18 very likely to trigger -- if Mr. Kane is released,
19 they're very likely to trigger him to act dangerously
20 and erratically, and that's because it's clear that the
21 primary trigger right now for Mr. Kane is the -- the
22 proceedings that are ongoing with respect to his
23 daughter.

24 I mean, that's made pretty clear by his postings.
25 And there are -- he is interacting in those proceedings

1 and with the people involved in those on a daily basis,
2 whether it's CPS folks, whether it is court hearings
3 that are scheduled -- at least they were scheduled for
4 mid-March. I'm not sure if those have been delayed yet,
5 but there are a number of court hearings that are going
6 to be coming up at some point regarding that, and
7 there's a reason to be concerned that those events will
8 trigger him to act out, especially if they don't go his
9 way. And, so far, during those proceedings, they have
10 not been going his way. And so I think the concerns are
11 exacerbated by that.

12 When you look at Mr. Kane's history and
13 characteristics, again, I think that it makes clear that
14 he is -- would be a danger to this community, at the
15 least. The pretrial -- the probation officer's report
16 documents -- in the complaint that we filed, documents
17 Mr. Kane has been convicted of three felonies; criminal
18 mischief, manufacturing controlled substances and
19 possession of controlled substances.

20 He's been convicted of two misdemeanor domestic
21 violence assaults, and I took particular note of his
22 conviction, albeit a misdemeanor conviction, but for
23 violation of an anti-harrassment order. That's speaks
24 volumes here, because Mr. Kane is going to be asking
25 this Court to trust him, to release him, to abide by the

1 Court's orders. And in this instance, at least, he was
2 convicted of violating an anti-harrassment order.

3 He also has an outstanding arrest warrant, and this
4 is noted in the recent probation report. There's an
5 outstanding arrest warrant for Mr. Kane issued out of
6 Oregon in a serious case where he attempted to
7 unlawfully purchase a firearm, otherwise known as a "lie
8 and buy" crime.

9 And there are some acts in the probation report
10 regarding this. I had the police report on that
11 incident, and I can proffer to the Court some additional
12 facts. And that is that in May of 2015, Mr. Kane
13 attempted to purchase a firearm at a sporting goods
14 store in Gresham, Oregon. When he did that, he lied on
15 the ATF federal form that one fills out when you buy a
16 firearm.

17 He lied in two ways. First, he denied that he had
18 ever been convicted of a felony. And then he denied
19 that he had ever been convicted of a domestic violence
20 misdemeanor offense, both of which would prohibit him
21 from possessing a gun. An Oregon state patrol officer
22 responded, because the store ran his background and
23 found that these were lies, so they called the police.

24 And Mr. Kane's response, at that point, was to lie
25 to the officer repeatedly. He told the officer he had

1 only been arrested once, when in fact, he's been
2 arrested -- it looks, through from the probation office,
3 (inaudible) times. He told the officer that, quote, "he
4 forgot about all the arrests" once the officer ran his
5 criminal history. He said he didn't know that any of
6 his prior convictions were felonies and that he had no
7 idea he had been convicted of domestic violence, even
8 though two of his offenses have the words "domestic
9 violence" in the title of the conviction.

10 So as a result of that, charges were filed against
11 him, and are still pending in Multnomah County, and --
12 in Circuit Court, and a warrant has been issued for him.
13 I think this incident, among the other conduct that we
14 see here, shows us that Mr. Kane cannot be trusted by
15 this Court.

16 At this point, let me refer the Court, if I may, to
17 the exhibits that we submitted. There are two exhibits;
18 Exhibit 1 and two. And I would submit to the Court --
19 I'm going to go over these with the Court. They're
20 somewhat hard to read. If the Court would like, I can
21 read them into the record.

22 These are text messages that were found on
23 Mr. Kane's phones, text messages with his daughter, the
24 daughter at issue in this proceeding. And I would
25 submit to the Court that these text messages make very

1 clear that Mr. Kane will not obey the Court's orders of
2 release, would not obey the probation office's
3 direction, in that any conditions of release, therefore,
4 would not be sufficient here.

5 Since the Court has Exhibit 1 -- are you able to
6 see Exhibit 1?

7 THE COURT: I have both Exhibit 1 and Exhibit 2 in
8 front of me right now.

9 MR. GREENBERG: Okay. Great. Thank you, Your
10 Honor. So I mean, I don't know how the Court -- if the
11 Court thinks it can clearly read these or, to me,
12 they're a little blurry, so if the Court would want me
13 to read them into the record, I will. Or if not, I can
14 just refer to them. What -- what -- what would the
15 Court like?

16 THE COURT: I will leave that to you,
17 Mr. Greenberg.

18 MR. GREENBERG: Okay. Thank you, Your Honor.
19 Well, Your Honor, looking at the first page of Exhibit 1
20 -- these are -- again, he's communicating with his
21 daughter.

22 And let me say, first of all, these communications
23 themselves were violations -- are violations of the
24 orders that were in place in the state proceeding
25 involving his daughter. He is not to be texting his

1 daughter. So these were sneaky communications against
2 the ruling in that proceeding. And that's the first
3 point.

4 The second -- the second thing is when we look at
5 page 1, the second green -- green text down -- and these
6 are all from the defendant, in green. He says, "maybe
7 we can use this as a way to lose the babysitter. We
8 have to go to have visits at their office at the DSHS
9 building."

10 And going to page 2, he says, "they are retarded,"
11 presumably referring to the CPS workers. And then says,
12 "we will see each other without them." That, again,
13 would be a violation. Visits with the daughter are
14 supposed to be supervised, and there are very strict
15 terms over those. His daughter replied, "awesome." He
16 then says, "well, all we have to do is say we're sick
17 for the visits and see each other anyway."

18 He continues on page 3, "go meet up in Oregon
19 someplace. I've never done anything to deserve a
20 babysitter to be with my kids." The daughter agrees.

21 Moving to page 4, his daughter says, "well, just
22 pick me up. How will they find out?" Mr. Kane
23 responds, "well, I would want your GRM," presumably
24 grandmother, "take you over to Oregon and meet us at a
25 restaurant. I don't want to get pulled over in my car

1 with you in there."

2 And going to the last page, he says, "that would be
3 instant" (inaudible). The daughter suggests that she
4 could go in the bed of the truck. And he said, "they
5 could see you." She said, "damn."

6 So these are communications that shouldn't be
7 happening anyway, and communications suggesting a plan
8 to meet up with his daughter in Oregon, a different
9 state, (inaudible) against all of the rules that are in
10 place in that proceeding.

11 If we look at Exhibit 2, another window into the --
12 the attitude and mind of Mr. Kane, he says, "fuck
13 crooked court officers. We won't follow them. I will
14 disrespect them, just as the Court disrespects my entire
15 family." When his daughter says that she doesn't want
16 him to get in trouble, he says, "they can't do anything
17 to me, LOL."

18 These are communications that happened within the
19 last week or so, and I would submit it gives this Court
20 no confidence at all that Mr. Kane would (inaudible) to
21 this Court's orders or those from the probation officer.

22 It also suggests a risk of flight, in terms of
23 trying to get his daughter into Oregon, and that is also
24 echoed in the victim impact letter that we have, that
25 the Court has, where it's reported that Mr. Kane has

1 said in the family court that if he has the opportunity,
2 he would want to get his daughter and girlfriend and go
3 to Idaho to avoid all these orders that are going on
4 from the Court.

5 Let me just quickly, Your Honor, address two
6 arguments that are being set -- I saw, either in the
7 defense memorandum or that I anticipate you will hear
8 shortly. And that is, firstly, the -- the idea that no
9 firearms and ammunition were found in the defendant's
10 house, and that is correct. The defense, of course, is
11 suggesting that that is evidence that this defendant is
12 not a harm, is not dangerous.

13 I would submit that that cuts both ways, because
14 from the Government's side, we're concerned that
15 Mr. Kane must have firearms and ammunition somewhere
16 else that we didn't find. And that's because he has
17 made repeated posts on line about having guns, going to
18 the firing range, having ammunition. And we've seen the
19 victim impact letter, again, the fact that BS reports
20 that Mr. Kane talks about having guns and ammunition.

21 And so we're left wondering, are they out there
22 somewhere else? I can't tell you that they are, but
23 it's a concern. I don't think it's as simple as saying,
24 well, he didn't have any.

25 The second -- the second argument I want to address

1 is -- I think it was suggested at the earlier hearing a
2 few days ago, and there was some inkling of it in the
3 memorandum filed today, somehow suggesting that the
4 Government's strength of the evidence that Mr. Kane made
5 these posts (inaudible).

6 And I would just tell this Court that I believe the
7 government has definitive proof that Mr. Kane made these
8 posts, and the best proof of that is found in the
9 complaint, which is that all of the posts resolve to the
10 IP address at the defendant's residence, and they're
11 subscribed to in his very name. That should be enough
12 proof that he is the individual making these statements.

13 On top of that, there were numerous screenshots of
14 the posts found on his phone. There were printouts of
15 some of the posts found in his paperwork at his home.
16 And, of course, the substance of the posts relate to his
17 personal grievances, relates to events that only
18 Mr. Kane is involved in or would really write about in
19 detail. So I think it's -- I believe the evidence is
20 extremely strong that Mr. Kane made these posts.

21 Lastly, Your Honor, the release plan, such as it is
22 suggested by the defense, is just simply not viable.
23 It's gone through various iterations, and at this point,
24 there is some -- there's even a suggestion that Mr. Kane
25 will go live where his -- where the mother of his

1 girlfriend lives, and they will switch houses.

2 Well, that mother is currently in custody of the
3 daughter, and all of this would have serious
4 implications for the Court proceedings, what CPS is
5 involved in, who is allowed to be where, and none of
6 that has been vetted or discussed at all. Even if this
7 house swap was to be approved, I would submit that it
8 does little to nothing to mitigate against the danger
9 risk of this defendant and may be against his attitude
10 of being unwilling to comply with Court orders and
11 rules.

12 And so in sum, Your Honor, we would ask the Court
13 to enter a detention order in this matter.

14 THE COURT: Ms. Carroll.

15 MS. CARROLL: Thank you, Your Honor. So I wanted
16 to talk about the factors for the Court to consider; the
17 nature of the offense, the weight of the evidence, the
18 history of the defendant and characteristics and mental
19 and financial family ties, et cetera, that -- that
20 Mr. Kane has with the community.

21 I also want to address some of the things the
22 Government talks about in its presentation, and I will
23 start there.

24 But then we talk about Mr. Kane's criminal history,
25 I would note that the -- the Oregon felony -- the

1 alleged felony the Government talks about are from the
2 mid '90s. Mr. Kane's last misdemeanor conviction in
3 Washington appears to be from 2010. The -- the incident
4 where Ms. Halverson notes there is an outstanding
5 warrant is from 2015. So all of that is -- is fairly
6 dated.

7 The Government talked about that these posts went
8 on for months and months. The only evidence the Court
9 has before it is from January.

10 The other -- BS, the named complaining witness in
11 the complaint, went and sought a no contact order in
12 Clark County in -- on January 27th. There's no evidence
13 before the -- in fact, all the evidence is that Mr. Kane
14 has complied with that Court order once it's been in
15 place.

16 These postings that Mr. Kane is alleged to have
17 made were not made to BS. They were made -- it's very
18 unclear from the complaint what the context of the forum
19 was. It appears that it's some kind of forum with
20 people who are empathetic with the views that the person
21 who is making the posts was expressing.

22 Talking about the risk of flight, Mr. Kane has a
23 residence in the area. He has been in the area since
24 the '70s. He has a girlfriend he has been with for
25 almost ten years. He has children in the area. He has

1 invested in the ongoing dependency matter that he has
2 going in -- in Clark County. He is represented by
3 counsel on that. It's very important that he be able to
4 continue to participate in those proceedings. It's very
5 clear that he cares deeply about his daughter in the
6 fight to gain custody of her.

7 So I think there's -- there's -- despite -- there's
8 ample evidence that Mr. Kane may say a lot of things,
9 but I -- I would ask the Court to concentrate on the
10 things that Mr. Kane has actually done, which is not to
11 violate the no contact order, which is to participate in
12 the ongoing -- ongoing dependency matter, which is to
13 have counsel.

14 He has made complaints, apparently, with various
15 law enforcement organizations, but I don't know that
16 that is -- that would be a proper way to address
17 concerns one has about the way one is being treated by
18 either law enforcement or CPS or the Attorney General's
19 Office.

20 We do have a release form. Mr. Kane can either
21 return to his home. Ms. Harvey is on the line. She
22 indicated he is welcome to return there. I understand
23 the Court has some concerns it may be close to where BS
24 lives. Again, I would emphasize that there is no
25 indication that he has violated the no contact order

1 that has been in place since January 27th.

2 The Court has ample resources available to it to
3 make sure that Mr. Kane is not in violation of any of
4 its -- of its orders. We're not relying, as the
5 Government implies, merely on a trust in Mr. Kane.
6 We're relying on various -- various resources the Court
7 has at its disposal.

8 I cited United States versus Daniel Patchew
9 (phonetic) in my -- in my brief. There, the Court goes
10 through a lengthy list of conditions the Court imposed
11 in a similar case, which involves cyberstalking and
12 doxing.

13 The Court could direct Mr. -- Mr. Kane to maintain
14 his residence, to have location monitoring at all times,
15 to not have any contact with BS or her family members
16 and to -- to put computer monitoring or limitations on
17 internet access that he has to comply with.

18 I think that those -- if we are to deal with the
19 least restrictive conditions, then I think the
20 (inaudible) could assure the Court that Mr. -- Mr. Kane
21 would not be a danger to the community and would be
22 (inaudible).

23 Your Honor, to address some of the things that the
24 government brought out, and the Government said that --
25 that Mr. Kane could not have known -- could not have not

1 known that this -- that the assault in 2010 was domestic
2 violence. I have reviewed the police report. It was an
3 incident with his brother at an outdoor festival in
4 Seattle. It is not what one would traditionally think
5 of as domestic violence. So I think it certainly is
6 possible that somebody would not think of those -- that
7 set of facts as the, quote-unquote, domestic violence.

8 The felonies that the government referred to,
9 again, were from the mid '90s. Mr. Kane does suffer
10 from documented medical conditions. He has had a number
11 of back surgeries. The conditions at FTC are not
12 amenable to that. He's having a very difficult time
13 with his health inside the FTC, and that is one of the
14 factors the Court can consider.

15 I will say these posts are -- express views that
16 are unpopular, but I ask the Court to focus on -- on the
17 allegations that are -- that are actually before the
18 Court, which are threats.

19 The portions of the posts in -- that are listed in
20 the complaint are taken out of context. There's liberal
21 use of ellipses. These are clearly cherrypicked to --
22 to be the worst that the Government could come up with.
23 They are generally general expressions of discontent and
24 general expressions of fears. There's very little in
25 the way of direct threat towards BS, and this report

1 talked about the specific intent that's required. These
2 were not made directly to BS.

3 The Government talked about following the school
4 bus. If -- it is noted Mr. Kane was in the same
5 neighborhood. If one follows a school bus, one needs to
6 stop every time it does make a stop. The little sign
7 comes out. He would not be allowed to pass a school bus
8 if he -- if he was behind it.

9 There -- I think, of note, is that RK is no longer
10 with BS. She is, as the Government noted, with
11 Ms. Harvey's mother, so within -- within Mr. Kane's
12 extended friends and family.

13 The exhibits that the Court talks about, the
14 Government submitted today, which are text message
15 exchanges purported to be between Mr. Kane and his
16 daughter, Wiley (phonetic), or RK, there's no evidence,
17 again, that Mr. Kane did any of the things that he talks
18 about.

19 This is clearly a difficult time for his daughter.
20 His daughter expresses a desire to be with him. These
21 could just be efforts by Mr. Kane to -- you know, to
22 reach out to his daughter and -- and make her feel like
23 he wants to be with her, and he will do whatever it
24 takes to be with her. But he did not do any of those
25 things. He did not go to Oregon. He did not circumvent

1 the -- the restrictions that were placed on (inaudible).

2 So given -- so this is the actual things that
3 Mr. Kane does, I think the Court has less to be worried
4 about and I think would be conditions that the Court
5 could put in place on Mr. Kane, to include location
6 monitoring and to include internet restrictions.

7 I think the Court can be assured that Mr. Kane
8 would not be a danger to the community and would not
9 seek to flee the jurisdiction during the pendency of
10 this case.

11 THE COURT: Thank you. And I'm going to ask
12 Ms. Halvorson, is there anything that you want to put on
13 the record besides what is in the supplemental pretrial
14 services report?

15 MS. HALVORSON: No, Your Honor.

16 THE COURT: All right. And is the Government
17 wanting to provide any rebuttal argument?

18 MR. GREENBERG: Your Honor, just two very quick
19 points. First is that, as indicated in the complaint,
20 although it's not fully illuminated, the posts that
21 Mr. Kane was making are publicly available, publicly
22 viewable, and that -- that phrase is in the complaint on
23 page 4, line 24.

24 These -- these are posts that appear as, like,
25 comments underneath articles or videos that people are

1 seeing on line. So these were very much in the public
2 domain and available for anyone to see, including BS.

3 The last point I want to make is counsel argued,
4 well, he talked about going to Oregon with his daughter
5 but never did it. Well, if you look at Exhibit 1, those
6 communications were on March 15th, the day before
7 Mr. Kane was arrested in this case. And so he didn't do
8 it, but he certainly didn't have an opportunity to do
9 it. He was talking about it and then got immediately
10 arrested.

11 That's all, Your Honor.

12 THE COURT: All right.

13 MS. CARROLL: Your Honor, if I could just add one
14 thing. I mean, the dependency case has been ongoing for
15 a while. Certainly, there are many opportunities he
16 would have had to -- to do those kinds of things.
17 There's no evidence he did any of that.

18 The Government indicated that Mr. Kane refused to
19 interact with police when they attempted to serve him
20 with the -- with the no contact order and the -- the
21 required notice about firearms. I've reviewed some of
22 the records from Clark County. There is a signed notice
23 in there that Mr. Kane signed attesting that he did not
24 have firearms to -- to surrender, which appears to be
25 the case, given that the search warrant was executed on

1 his house and no firearms were found.

2 THE COURT: All right. The Court is going to take
3 a very short recess, and then I will come back on the
4 record and give you my ruling.

5 THE CLERK: This court is in recess.

6 (A short recess was then taken.)

7 THE CLERK: All rise. This court is session. The
8 Honorable Theresa L. Fricke presiding.

9 THE COURT: Please be seated. The Court has
10 considered all of the factors in the Bail Reform Act, 18
11 United States Code, Section 3142, subsection (g). Also,
12 the Court is confirming this is not a case where there
13 is a statutory presumption. The Government bears the
14 burden of showing, by a preponderance of the evidence,
15 that Mr. Kane is a flight risk. The Government bears
16 the burden by clear and convincing evidence that
17 Mr. Kane poses a danger to others or to the community.

18 The defendant, in any criminal case, has the
19 Constitutional right to be presumed innocent. And in
20 this matter, Mr. Kane is at the very earliest stages of
21 this criminal matter where he's been charged by
22 complaint, and the Court's responsibility, under the
23 Bail Reform Act, is to consider all of the information
24 presented to the Court by the defense and by the
25 Government, and make a determination whether there are

1 no conditions or a combination of conditions that will
2 reasonably assure the safety of the community or the
3 appearance of the defendant, as required, and the Court
4 is to consider the least restrictive means of mitigating
5 any risk.

6 In this situation, the Court finds that the
7 government has met its burden as to both the risk of
8 dangerousness and the risk of flight, and the Court is
9 going to order that Mr. Kane be detained pending trial.

10 I have considered the information provided by the
11 defense, and in the defendant's favor, he has been a
12 long time resident of the state of Washington and a
13 person who has had stable ties to his community. He
14 clearly has family and friends who are important to him,
15 and they are people who care about him as well. He
16 clearly deeply cares about his family, and so the Court
17 has considered those factors in Mr. Kane's favor.

18 The Court finds, however, that those factors are
19 outweighed by the information that was presented by the
20 Government and that by clear and convincing evidence,
21 the Government has shown that there is a severe risk,
22 based on both prior convictions and based on the
23 information that is contained in the complaint, so the
24 circumstances of the offense that is before the Court
25 right now.

1 Of course, at an early stage of the case, the Court
2 is not in a position to determine just how strong the
3 Government's evidence ultimately would be at trial,
4 because this is still at a very early stage of the case.

5 Based on information in the complaint, as well as
6 information presented during this hearing, the violation
7 of the anti-harrassment order, of course, is very strong
8 evidence that Mr. Kane has not complied with Court
9 orders in the past.

10 Also, the circumstances of the current offense, the
11 serious threats and the communications that were made
12 publicly that were of a very serious threatening nature,
13 and also, communications that he has access to or
14 possesses firearms and ammunition.

15 And in addition, the Court considered the text
16 messages that were placed into the record, Exhibits 1
17 and 2 that the Government has placed into the record.

18 And the Court also is concerned about this pending
19 arrest warrant from Oregon showing that there is
20 concern, based on these police reports, that false
21 statements were made concerning obtaining a firearm.

22 And in addition, the Court is concerned about the
23 potential that upcoming events in the child custody
24 proceedings could make a difficult situation even more
25 difficult, in terms of Mr. Kane's potential for not

1 obeying Court orders.

2 So the Court is going to grant the government's
3 motion for detention, and I find that the proposed
4 placement that has been suggested by the defense in the
5 defense brief would not be sufficient to mitigate the
6 risk of dangerousness or the risk of flight. And the
7 risk of flight, I think, here is mainly based on the
8 fact that there were some communications about going to
9 Oregon, that those communications were made at a time
10 when it would appear that perhaps the defendant wanted
11 to leave the jurisdiction in order to avoid the child
12 custody Court's orders and future hearings in that
13 matter. So that certainly is, by a preponderance of the
14 evidence, a risk of flight.

15 So that will be the Court's ruling. Of course, I
16 will issue a written decision that is required under the
17 Bail Reform Act. Do counsel wish to raise any other
18 matters at this time?

19 MATHIAS KANE: Could I say one thing, Your Honor?

20 THE COURT: You know, I will leave it to you to
21 consult with your attorney about whether you would he
22 like to waive your right to remain silent. That's a
23 very serious matter in any hearing --

24 MATHIAS KANE: I just want to say that I'm scared
25 for my daughter because of how she's going to react to

1 the fact that I'm not going to be able to be there for
2 the dependency. That's pretty much all I wanted to say.

3 She's -- she's been hurting herself, cutting
4 herself over all of this, and that's pretty much my main
5 concern as how her -- her safety and how she's going to
6 feel about this, because she loves me deeply, and I love
7 her deeply. And we just want -- we wanted to be
8 together and bring our family back together. That's all
9 we ever wanted.

10 THE COURT: Okay. And, Ms. Carroll, did you want
11 to consult with your client, or is the statement that he
12 just made something that you're comfortable placing on
13 the record?

14 MS. CARROLL: No, I -- I think Mr. Kane just wanted
15 to express his concern about his daughter's reaction of
16 his being detained.

17 MATHIAS KANE: I'm scared.

18 THE COURT: Okay.

19 MATHIAS KANE: I'm scared of what -- how she's
20 going to react, Your Honor.

21 THE COURT: Okay. All right. Then at this time,
22 the defendant will be remanded to the custody of the
23 United States marshall pending the next hearing in this
24 matter, and the Court will now be in recess.

25 THE CLERK: All rise.

1 (Conclusion of hearing.)

2

3

4 /s/ Mary M. Paradise, CSR 2469

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